IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 795 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPAK DAHYABHAI PANCHOLI

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner No. 1

MR RM CHAUHAN, APP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/10/2003

ORAL JUDGEMENT

1. By way of this Special Criminal Application, the petitioner has challenged the order passed by the respondent No.3 Deputy Police Commissioner, East Division, City of Surat, on 22.4.2003, removing and

externing the petitioner from the limits of city of Surat, area of Rural Surat, District of Bharuch and Narmada, Navsari, Valsad and District of Dang - Ahwa in pursuance of notice issued by him to the petitioner on 11.1.2003 in Externment Case No.1 of 2003.

2. The petitioner also preferred an Appeal against the said order passed by respondent No.3 before the State Government as per Section 60 of the Bombay Police Act, 1951, and vide order dated 1st of July, 2003, the State Government was pleased to modify the order passed by the respondent No.3 to the extent that the period of Externment was reduced to one year from two years and the order of respondent No.3 was modified to the extent that the externment was restricted only upto the Surat District, and the removal of the petitioner from other adjoining districts by the respondent No.3 was quashed. In this Special Criminal Application, both the above orders are challenged.

3. The facts leading to filing this Special Criminal Application being that in Externment Case No.1 of 2003, the respondent No.3 issued notice to the petitioner under Section 59 of the Bombay Police Act, 1951, with a proposal to remove the petitioner from the City of Surat and the District of Surat and from adjoining districts on the ground that there were two offences registered against the petitioner on 10.5.2001 and on 18.10.2002 under Sections 323, 504, 506(2) and 114 and in the second case under Section 326 and 114 of the Indian Penal Code. In the grounds, the criminal tendency of the petitioner was also relied upon through two in-camera statements recorded on 17.4.2002 and 9.9.2002, wherein the Petitioner alleged to have committed unreported offence and it was alleged that due to his nefarious activities, the public order was disturbed and due to fear, none was prepared to give evidence against him. In response to said show cause notice, the petitioner filed reply on 5.2.2003 and offered his evidence in defence by way of four oral witnesses as well as documentary evidence. However, after considering the contentions of both the sides, respondent No.3 passed the impugned order on 22.4.2003 and the said order was modified by the State Government in an Appeal, as aforesaid.

4. Learned Advocate Mr.Harin P.Raval for the petitioner and learned APP Mr.RM Chauhan for the respondents were heard at length. The affidavit-in-reply as field by the Deputy Commissioner of Police, Eastern Division, Surat City, as placed on record is also taken into consideration in spite of the objections raised by

the learned advocate for the petitioner.

5. Out of various contentions raised on behalf of the petitioner and controverted by learned APP, from rival contentions, it appears that the matter can be discussed and considered on the aspect of whether the concerned authority i.e. respondent No.3 had undertaken due exercise to reach to a decision, which is alleged in this petitioner. In this respect, it is necessary to refer to Section 59 of the Bombay Police Act, which statutorily casts a duty upon the concerned authority to give the proposed externee a reasonable opportunity of tendering an explanation. Not only that, but the statutory provision also casts duty upon the concerned authority to grant an application of the proposed externee to lead any evidence in his support. The Section 59 again in clear terms mandates such authorities that after examining such witnesses and after considering the explanation, as might have been offered by the externee, any order can be passed under Section 56 of the Bombay Police Act, 1959. In this regard, it is pertinent to note that, undoubtedly, the petitioner offered four witnesses to his defence in the proceedings of externment. As per the statutory provision, the proposed externee is not entitled to know the names of the witnesses, who have made statements against him or who have been examined by the Inquiry Officer acting under Section 59(1) of the Bombay Police Act, 1951 and, therefore, the duty is cast upon the Inquiring Authority to evaluate the material placed before him objectively and to decide the matter, according to his discretion. This is so because, as aforesaid, the proposed externee is not entitled to know the names of the witnesses, who might have deposed against him, and that being the case, it is not the subjective satisfaction only, but the objective appreciation, according to discretion of the Enquiring Officer, is the mandate of the Section 59 of the Bombay Police Act 1951. True that it is left entirely to the discretion of the externing authority to find out whether the explanation or evidence led by the proposed externee is sufficient to meet the allegation which they have been made before the externing authority by different persons, but at the same time, it cannot be said that appreciation of the evidence by the externing authority, even if capricious or mala fide, would support the order passed against the proposed externee, while something is left to be done according to the discretion of the authority, to whom the power of doing so is conferred, then such discretion must be exercised honestly and in the spirit of the statute. Meaning thereby that, such discretion must be according to the

rules of reason and justice and not according to personal opinion. With this context, if the facts of this case are examined, it is clear that there is nowhere reflected in the order that the explanation offered by the petitioner or the evidence tendered by him in his support were met with. The show cause notice is not discussed by the authority concerned. Only this court finds one paragraph in the order impugned passed by respondent No.3 that taking into consideration the facts mentioned in the show cause notice and considering those facts, the authority concerned i.e. respondent No.3 came to the conclusion that the allegation made against the petitioner were true and correct. Except these lines, there is nothing in the order to reflect that the authority discharged the mandate of Section 59 of the Bombay Police Act as to appreciating the evidence produced on behalf of the proposed externee objectively to meet with the allegations levelled against the proposed externee, as conveyed to him through show cause notice. In fact, what appears from the order passed and record placed that the defence which proposed externee produced on record was never considered by the Inquiring Authority, let alone the consideration by him was according to discretion. The order, therefore, suffers from this infirmity on account of not exercising powers properly as mandated by Section 59 of the Bombay Police Act, 1951. The orders impugned in this petition therefore are required to be quashed and set aside on this ground alone.

6 In the result, the order passed by the respondent No.3 on 22.4.2003 in Externment Case No.1/2003 is quashed and set aside and consequently the order dated 1.7.2003 passed by the Appellate Authority i.e. State Government modifying the order of Respondent No.3, as aforesaid, is also quashed and set aside. The petition is allowed. Rule made absolute to the aforesaid extent. DS permitted.

(J.R. Vora, J.)

p.n.nair